

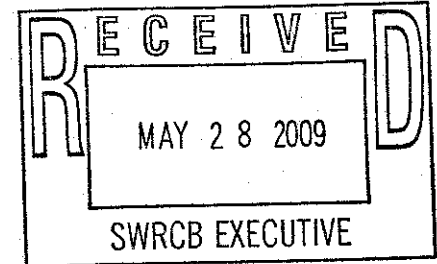
COALITION FOR PRACTICAL REGULATION

"Cities Working on Practical Solutions"

May 28, 2009

Via Electronic and U.S. Mail

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
Office of Enforcement
1001 I Street
Sacramento, CA 95814
commentletters@waterboards.ca.gov



Subject: Water Quality Enforcement Policy Workshop 6/4/09

Dear Ms. Townsend:

I am writing on behalf of the Coalition for Practical Regulation (CPR), an *ad hoc* group of 39 small and medium-sized cities in Los Angeles County that have come together to address water quality issues. We thank the State Water Resources Control Board for the opportunity to provide these comments regarding the May 6, 2009 revised draft Water Quality Enforcement Policy (WQEP) for the State Water Board's workshop on June 4, 2009. This letter expands upon comments CPR submitted on the December 2008 draft Water Quality Enforcement Policy in a letter dated February 5, 2009 (attached).

CPR would like to again commend the Water Boards for allocating significant resources to the effort of drafting the Water Quality Enforcement Policy. As we acknowledged in our February 2009 letter, there are significant challenges involved in devising a policy that increases consistency and transparency among the regions while preserving the ability for the Regional Board staff to exercise their best professional judgment in responding to local conditions.

CPR appreciates changes State Board staff has made in this draft Water Quality Enforcement Policy. We particularly appreciate a change in this revised draft regarding the imposition of maximum mandatory penalties (MMPs) for the failure to submit monitoring reports for quarters during which no discharges occurred. We agree that it is not appropriate to impose MMPs in such instances and appreciate the State Water Board's modifying this section to reflect that. This was an onerous requirement that served only to potentially drain agencies' available funds – not to enhance water quality.

ARCADIA
ARTESIA
BALDWIN PARK
BELL
BELL GARDENS
BELLFLOWER
CARSON
CERRITOS
COMMERCE
COVINA
DIAMOND BAR
DOWNEY
GARDENA
HAWAIIAN GARDENS
INDUSTRY
IRVINDALE
LA CAÑADA FLINTRIDGE
LA MIRADA
LAKEWOOD
LAWDALE
MONTEREY PARK
NORWALK
PALOS VERDES ESTATES
PARAMOUNT
PICO RIVERA
POMONA
RANCHO PALOS VERDES
ROSEMEAD
SANTA FE SPRINGS
SAN GABRIEL
SIERRA MADRE
SIGNAL HILL
SOUTH EL MONTE
SOUTH GATE
SOUTH PASADENA
VERNON
WALNUT
WEST COVINA
WHITTIER

In addition, we support the addition of language stating that the Water Boards will pursue enforcement consistent with the goals identified in CalEPA's *Intra-Agency Environmental Justice Strategy*. The strategies noted, including ensuring meaningful public participation regarding enforcement matters and ensuring effective cross-media coordination and accountability in addressing environmental justice issues, are indicative of a positive direction your Board is taking with this Enforcement Policy.

As stated in the February 2009 letter, CPR also appreciates the State Water Board for recognizing in the WQEP that compliance with environmental laws and regulations requires higher per capita expenditures in small communities than in large communities. However, we continue to have concerns about the definition of "small communities" used in the WQEP. Small communities are defined in Chapter VII.B as POTWs serving small communities that have financial hardship, depend primarily on residential fees, and have a population of 10,000 or fewer people or lying completely within a rural county. Such a definition excludes small metropolitan communities that struggle to achieve compliance with water quality regulations related to stormwater.

We request that the State Board direct staff to insert new language recognizing both the existing POTW-dependent definition of "small communities" and a new definition of small urban communities as two distinct categories – the first relating to waste water and the second to stormwater. As previously requested, the WQEP should recognize that, in metropolitan regions, any city with a population of less than 50,000 is a small city. Such a definition would be consistent with the definition of "small entity" in a federal law known as the Regulatory Flexibility Act. The term "small entity" involves a "small governmental jurisdiction," which includes any city "with a population of less than fifty thousand." (5 U.S.C. § 604(a)(5)). This could provide a useful, workable definition that is much better suited to the realities of stormwater management. There are many smaller municipalities for which being regulated on a par with a city the size of Long Beach or Los Angeles is not only inappropriate, but is functionally unworkable. Staffing issues and fiscal restrictions, while a reality for all cities and agencies, are particularly acute for "small entities" such as cities with populations less than 50,000. In addition to the definition of "small entities," CPR again requests the addition of a new component of Chapter VII that provides an alternative to assessing mandatory minimum penalties (MMPs) for small cities in urban regions with MS4 stormwater permits.

As we requested in our February 2009 letter, CPR encourages the State Board to revise the Enforcement Policy to recognize that compliance with environmental rules and regulations in urbanized regions costs more per capita for small cities than it does for large cities, and that small cities subject to MS4 Stormwater Permits have ever-increasing costs related to stormwater quality compliance. Further, small cities seldom have a separate revenue stream to fund these expenditures, and, in the post-Proposition 218 era, it is difficult for municipalities to gain approval for new fees to fund stormwater quality improvements.

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Further, using a population of 50,000 as the upper limit for a small city alternative for assessing MMPs would establish the threshold at the population size above which the State Water Board automatically designated small cities as regulated Small MS4s under the General Permit for Discharges from Small Separate Storm Sewer Systems adopted on April 30, 2003. In addition, since costs are increasing and most stormwater permittees do not have enterprise funds for stormwater, the small city alternative to assessing MMPs does not need to contain the "financial hardship" criteria used for POTWs serving small communities.

As noted in the February letter, CPR also requests that State Board staff improve the methodology for written communications to municipalities. Specifically, with respect to alleged violations for failure to submit a report, we recommend that the policy be revised such that a failure to submit a report will be considered a single violation unless the State Water Board or Regional Water Board has provided written notice to the municipality or agency regarding the outstanding report.

While CPR recognizes that this could appear to represent a potential challenge in terms of staff resources, we request that your Board consider that a similar challenge affects the cities; in fact, this challenge can be the sole cause for a municipality's inadvertently failing to file a required report. We ask that the State Board require this notification prior to compounding a penalty in order to foster improved communication between the Water Boards and the regulated community to reach our common goals. The current policy can result in unnecessarily exorbitant fines that may or not have any direct impact on water quality. CPR understands that, in fact, legislation has been introduced in the State Assembly (AB 25) that would, in part, amend Water Code Section 13385.1 to provide that a violation under that section would be considered a single violation unless the Water Board provides written notice to the violator regarding the violation. This would be a considerable improvement over current draft policy.

Alternatively, if the State Water Board concludes that it cannot expect Regional Water Boards to provide immediate written notices because of budget and staffing problems, it should amend the draft policy to recognize that local governments also have budget and staffing problems. The WQEF should encourage Water Boards to provide timely notices of failure to file reports. Water Boards should be limited to six 30-day periods in calculating penalties unless they have provided notice of failure to file reports within 90 days of the permit due date.

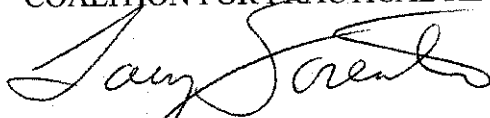
In addition, to reiterate a request from the February 2009 letter, CPR requests that written communications to cities be sent via certified mail to both the Director of Public Works and the City Manager in order to ensure that they come to the attention of appropriate management-level personnel within the city. This would represent a good-faith effort on the part of the State Water Board or Regional Water Boards to contact the person or persons best able to address a deficiency.

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Thank you again for the opportunity to provide these comments. CPR looks forward to continuing to work with the State and Regional Water Boards to improve water quality in California.

Sincerely,

COALITION FOR PRACTICAL REGULATION (CPR)

A handwritten signature in dark ink, appearing to read "Larry Forester", with a stylized, flowing script.

Larry Forester
Council Member, City of Signal Hill